

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

MR. SPEAKER:

*Your Committee on Insurance, to which was referred Senate Bill 634, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 27-4-1-4 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. The following are
5 hereby defined as unfair methods of competition and unfair and
6 deceptive acts and practices in the business of insurance:
7 (1) Making, issuing, circulating, or causing to be made, issued, or
8 circulated, any estimate, illustration, circular, or statement:
9 (A) misrepresenting the terms of any policy issued or to be
10 issued or the benefits or advantages promised thereby or the
11 dividends or share of the surplus to be received thereon;
12 (B) making any false or misleading statement as to the
13 dividends or share of surplus previously paid on similar
14 policies;

- 1 (C) making any misleading representation or any
2 misrepresentation as to the financial condition of any insurer,
3 or as to the legal reserve system upon which any life insurer
4 operates;
- 5 (D) using any name or title of any policy or class of policies
6 misrepresenting the true nature thereof; or
- 7 (E) making any misrepresentation to any policyholder insured
8 in any company for the purpose of inducing or tending to
9 induce such policyholder to lapse, forfeit, or surrender the
10 policyholder's insurance.
- 11 (2) Making, publishing, disseminating, circulating, or placing
12 before the public, or causing, directly or indirectly, to be made,
13 published, disseminated, circulated, or placed before the public,
14 in a newspaper, magazine, or other publication, or in the form of
15 a notice, circular, pamphlet, letter, or poster, or over any radio or
16 television station, or in any other way, an advertisement,
17 announcement, or statement containing any assertion,
18 representation, or statement with respect to any person in the
19 conduct of the person's insurance business, which is untrue,
20 deceptive, or misleading.
- 21 (3) Making, publishing, disseminating, or circulating, directly or
22 indirectly, or aiding, abetting, or encouraging the making,
23 publishing, disseminating, or circulating of any oral or written
24 statement or any pamphlet, circular, article, or literature which is
25 false, or maliciously critical of or derogatory to the financial
26 condition of an insurer, and which is calculated to injure any
27 person engaged in the business of insurance.
- 28 (4) Entering into any agreement to commit, or individually or by
29 a concerted action committing any act of boycott, coercion, or
30 intimidation resulting or tending to result in unreasonable restraint
31 of, or a monopoly in, the business of insurance.
- 32 (5) Filing with any supervisory or other public official, or making,
33 publishing, disseminating, circulating, or delivering to any person,
34 or placing before the public, or causing directly or indirectly, to
35 be made, published, disseminated, circulated, delivered to any
36 person, or placed before the public, any false statement of
37 financial condition of an insurer with intent to deceive. Making
38 any false entry in any book, report, or statement of any insurer

1 with intent to deceive any agent or examiner lawfully appointed
2 to examine into its condition or into any of its affairs, or any
3 public official to which such insurer is required by law to report,
4 or which has authority by law to examine into its condition or into
5 any of its affairs, or, with like intent, willfully omitting to make a
6 true entry of any material fact pertaining to the business of such
7 insurer in any book, report, or statement of such insurer.

8 (6) Issuing or delivering or permitting agents, officers, or
9 employees to issue or deliver, agency company stock or other
10 capital stock, or benefit certificates or shares in any common law
11 corporation, or securities or any special or advisory board
12 contracts or other contracts of any kind promising returns and
13 profits as an inducement to insurance.

14 (7) Making or permitting any of the following:

15 (A) Unfair discrimination between individuals of the same
16 class and equal expectation of life in the rates or assessments
17 charged for any contract of life insurance or of life annuity or
18 in the dividends or other benefits payable thereon, or in any
19 other of the terms and conditions of such contract; however, in
20 determining the class, consideration may be given to the nature
21 of the risk, plan of insurance, the actual or expected expense of
22 conducting the business, or any other relevant factor.

23 (B) Unfair discrimination between individuals of the same
24 class involving essentially the same hazards in the amount of
25 premium, policy fees, assessments, or rates charged or made
26 for any policy or contract of accident or health insurance or in
27 the benefits payable thereunder, or in any of the terms or
28 conditions of such contract, or in any other manner whatever;
29 however, in determining the class, consideration may be given
30 to the nature of the risk, the plan of insurance, the actual or
31 expected expense of conducting the business, or any other
32 relevant factor.

33 (C) Excessive or inadequate charges for premiums, policy fees,
34 assessments, or rates, or making or permitting any unfair
35 discrimination between persons of the same class involving
36 essentially the same hazards, in the amount of premiums,
37 policy fees, assessments, or rates charged or made for:

38 (i) policies or contracts of reinsurance or joint reinsurance,

- 1 or abstract and title insurance;
- 2 (ii) policies or contracts of insurance against loss or damage
- 3 to aircraft, or against liability arising out of the ownership,
- 4 maintenance, or use of any aircraft, or of vessels or craft,
- 5 their cargoes, marine builders' risks, marine protection and
- 6 indemnity, or other risks commonly insured under marine, as
- 7 distinguished from inland marine, insurance; or
- 8 (iii) policies or contracts of any other kind or kinds of
- 9 insurance whatsoever.

10 However, nothing contained in clause (C) shall be construed to

11 apply to any of the kinds of insurance referred to in clauses (A)

12 and (B) nor to reinsurance in relation to such kinds of insurance.

13 Nothing in clause (A), (B), or (C) shall be construed as making or

14 permitting any excessive, inadequate, or unfairly discriminatory

15 charge or rate or any charge or rate determined by the department

16 or commissioner to meet the requirements of any other insurance

17 rate regulatory law of this state.

18 (8) Except as otherwise expressly provided by law, knowingly

19 permitting or offering to make or making any contract or policy

20 of insurance of any kind or kinds whatsoever, including but not in

21 limitation, life annuities, or agreement as to such contract or

22 policy other than as plainly expressed in such contract or policy

23 issued thereon, or paying or allowing, or giving or offering to pay,

24 allow, or give, directly or indirectly, as inducement to such

25 insurance, or annuity, any rebate of premiums payable on the

26 contract, or any special favor or advantage in the dividends,

27 savings, or other benefits thereon, or any valuable consideration

28 or inducement whatever not specified in the contract or policy; or

29 giving, or selling, or purchasing or offering to give, sell, or

30 purchase as inducement to such insurance or annuity or in

31 connection therewith, any stocks, bonds, or other securities of any

32 insurance company or other corporation, association, limited

33 liability company, or partnership, or any dividends, savings, or

34 profits accrued thereon, or anything of value whatsoever not

35 specified in the contract. Nothing in this subdivision and

36 subdivision (7) shall be construed as including within the

37 definition of discrimination or rebates any of the following

38 practices:

- 1 (A) Paying bonuses to policyholders or otherwise abating their
2 premiums in whole or in part out of surplus accumulated from
3 nonparticipating insurance, so long as any such bonuses or
4 abatement of premiums are fair and equitable to policyholders
5 and for the best interests of the company and its policyholders.
- 6 (B) In the case of life insurance policies issued on the
7 industrial debit plan, making allowance to policyholders who
8 have continuously for a specified period made premium
9 payments directly to an office of the insurer in an amount
10 which fairly represents the saving in collection expense.
- 11 (C) Readjustment of the rate of premium for a group insurance
12 policy based on the loss or expense experience thereunder, at
13 the end of the first year or of any subsequent year of insurance
14 thereunder, which may be made retroactive only for such
15 policy year.
- 16 (D) Paying by an insurer or insurance producer thereof duly
17 licensed as such under the laws of this state of money,
18 commission, or brokerage, or giving or allowing by an insurer
19 or such licensed insurance producer thereof anything of value,
20 for or on account of the solicitation or negotiation of policies
21 or other contracts of any kind or kinds, to a broker, an
22 insurance producer, or a solicitor duly licensed under the laws
23 of this state, but such broker, insurance producer, or solicitor
24 receiving such consideration shall not pay, give, or allow credit
25 for such consideration as received in whole or in part, directly
26 or indirectly, to the insured by way of rebate.
- 27 (9) Requiring, as a condition precedent to loaning money upon the
28 security of a mortgage upon real property, that the owner of the
29 property to whom the money is to be loaned negotiate any policy
30 of insurance covering such real property through a particular
31 insurance producer or broker or brokers. However, this
32 subdivision shall not prevent the exercise by any lender of the
33 lender's right to approve or disapprove of the insurance company
34 selected by the borrower to underwrite the insurance.
- 35 (10) Entering into any contract, combination in the form of a trust
36 or otherwise, or conspiracy in restraint of commerce in the
37 business of insurance.
- 38 (11) Monopolizing or attempting to monopolize or combining or

1 conspiring with any other person or persons to monopolize any
2 part of commerce in the business of insurance. However,
3 participation as a member, director, or officer in the activities of
4 any nonprofit organization of insurance producers or other
5 workers in the insurance business shall not be interpreted, in itself,
6 to constitute a combination in restraint of trade or as combining to
7 create a monopoly as provided in this subdivision and subdivision
8 (10). The enumeration in this chapter of specific unfair methods
9 of competition and unfair or deceptive acts and practices in the
10 business of insurance is not exclusive or restrictive or intended to
11 limit the powers of the commissioner or department or of any
12 court of review under section 8 of this chapter.

13 (12) Requiring as a condition precedent to the sale of real or
14 personal property under any contract of sale, conditional sales
15 contract, or other similar instrument or upon the security of a
16 chattel mortgage, that the buyer of such property negotiate any
17 policy of insurance covering such property through a particular
18 insurance company, insurance producer, or broker or brokers.
19 However, this subdivision shall not prevent the exercise by any
20 seller of such property or the one making a loan thereon of the
21 right to approve or disapprove of the insurance company selected
22 by the buyer to underwrite the insurance.

23 (13) Issuing, offering, or participating in a plan to issue or offer,
24 any policy or certificate of insurance of any kind or character as
25 an inducement to the purchase of any property, real, personal, or
26 mixed, or services of any kind, where a charge to the insured is
27 not made for and on account of such policy or certificate of
28 insurance. However, this subdivision shall not apply to any of the
29 following:

30 (A) Insurance issued to credit unions or members of credit
31 unions in connection with the purchase of shares in such credit
32 unions.

33 (B) Insurance employed as a means of guaranteeing the
34 performance of goods and designed to benefit the purchasers
35 or users of such goods.

36 (C) Title insurance.

37 (D) Insurance written in connection with an indebtedness and
38 intended as a means of repaying such indebtedness in the event

- 1 of the death or disability of the insured.
- 2 (E) Insurance provided by or through motorists service clubs
- 3 or associations.
- 4 (F) Insurance that is provided to the purchaser or holder of an
- 5 air transportation ticket and that:
- 6 (i) insures against death or nonfatal injury that occurs during
- 7 the flight to which the ticket relates;
- 8 (ii) insures against personal injury or property damage that
- 9 occurs during travel to or from the airport in a common
- 10 carrier immediately before or after the flight;
- 11 (iii) insures against baggage loss during the flight to which
- 12 the ticket relates; or
- 13 (iv) insures against a flight cancellation to which the ticket
- 14 relates.
- 15 (14) Refusing, because of the for-profit status of a hospital or
- 16 medical facility, to make payments otherwise required to be made
- 17 under a contract or policy of insurance for charges incurred by an
- 18 insured in such a for-profit hospital or other for-profit medical
- 19 facility licensed by the state department of health.
- 20 (15) Refusing to insure an individual, refusing to continue to issue
- 21 insurance to an individual, limiting the amount, extent, or kind of
- 22 coverage available to an individual, or charging an individual a
- 23 different rate for the same coverage, solely because of that
- 24 individual's blindness or partial blindness, except where the
- 25 refusal, limitation, or rate differential is based on sound actuarial
- 26 principles or is related to actual or reasonably anticipated
- 27 experience.
- 28 (16) Committing or performing, with such frequency as to indicate
- 29 a general practice, unfair claim settlement practices (as defined in
- 30 section 4.5 of this chapter).
- 31 (17) Between policy renewal dates, unilaterally canceling an
- 32 individual's coverage under an individual or group health
- 33 insurance policy solely because of the individual's medical or
- 34 physical condition.
- 35 (18) Using a policy form or rider that would permit a cancellation
- 36 of coverage as described in subdivision (17).
- 37 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
- 38 vehicle insurance rates.

- 1 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 2 to interest rate guarantees.
- 3 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 4 coverage for victims of abuse.
- 5 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 6 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
- 7 insurance producers.
- 8 (24) Violating IC 27-1-38 concerning depository institutions.
- 9 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
- 10 the resolution of an appealed grievance decision.
- 11 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or
- 12 IC 27-8-5-19.2.
- 13 (27) Violating IC 27-2-21 concerning use of credit information.
- 14 **(28) Violating IC 27-4-9-3 concerning recommendations to**
- 15 **senior consumers.**

16 SECTION 2. IC 27-4-9 IS ADDED TO THE INDIANA CODE AS
 17 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2005]:

19 **Chapter 9. Recommendations to Senior Consumers**

20 **Sec. 1. As used in this chapter, "securities commissioner" refers**
 21 **to the commissioner appointed by the secretary of state under**
 22 **IC 23-2-1-15.**

23 **Sec. 2. As used in this chapter, "senior consumer" means an**
 24 **individual who is at least sixty-five (65) years of age.**

25 **Sec. 3. (a) An insurance producer, or an insurer in a case in**
 26 **which an insurance producer is not involved, shall not recommend**
 27 **to a senior consumer the:**

- 28 **(1) purchase of an annuity; or**
- 29 **(2) exchange of an annuity that results in another insurance**
- 30 **transaction;**
- 31 **that is unsuitable for the senior consumer.**

32 **(b) A determination regarding whether a purchase or an**
 33 **exchange under subsection (a) is unsuitable for a senior consumer**
 34 **must be made:**

- 35 **(1) based on the facts disclosed by the senior consumer**
- 36 **concerning the senior consumer's:**
- 37 **(A) investments and other insurance products; and**
- 38 **(B) financial situation and needs; and**

1 (2) according to the rule adopted under section 4 of this
2 chapter.

3 Sec. 4. The department shall adopt a rule under IC 4-22-2 to
4 establish a method for making determinations as to whether a
5 purchase or an exchange described in section 3 of this chapter is
6 unsuitable for a senior consumer.

7 Sec. 5. (a) Except as provided in subsection (b), a
8 recommendation made in violation of section 3 of this chapter is an
9 unfair method of competition or an unfair and deceptive act or
10 practice under IC 27-4-1-4.

11 (b) A recommendation made in violation of section 3 of this
12 chapter is not an unfair method of competition or an unfair and
13 deceptive act or practice under IC 27-4-1-4 if the recommendation
14 is made in compliance with the National Association of Securities
15 Dealers Conduct Rules concerning suitability, as determined by the
16 commissioner.

17 Sec. 6. (a) The commissioner may conduct an investigation,
18 pursue an enforcement action, and take other official action that
19 the commissioner considers appropriate to ensure compliance with
20 section 3 of this chapter.

21 (b) With regard to a variable annuity, the commissioner may:
22 (1) consult with the securities commissioner; and
23 (2) use the resources of the securities commissioner;
24 in making a final determination regarding any issue concerning
25 compliance with section 3 of this chapter.

26 (c) If the securities commissioner is informed of a violation or
27 suspected violation of section 3 of this chapter or other insurance
28 laws of the state, the securities commissioner shall timely advise the
29 commissioner of the violation or suspected violation."

30 Page 2, line 19, delete "mean" and insert "means".

- 1 Page 4, line 12, after "exclusively" insert ",".
- 2 Page 4, line 39, delete "," and insert "**and**".
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 634 as printed February 15, 2005.)

and when so amended that said bill do pass.

Representative Ripley